

**TOWN OF EAST WINDSOR
INLAND WETLANDS WATERCOURSE AGENCY**

Regular Meeting – September 7, 2011

CALL TO ORDER: Chairman Savaria called the Meeting to order at 7:04 p.m. in the Town Hall Meeting Room, 11 Rye Street, Broad Brook, CT.

ESTABLISHMENT OF QUORUM:

Present: Regular Members Ron Savaria (Chairman), Michael Koczera, John Malin, Richard Osborn, Michael Sawka, and Alternate Members Alan Baker, and Kathryn Roloff.

Unable to Attend: Regular Member Slate.

Guests: Selectman Richard Pippin (Inland/Wetlands Liaison); Kathy Pippin, Board of Finance.

Chairman Savaria noted the establishment of a quorum with 5 Regular and two Alternate Members as noted above. All Regular members will sit in on votes this evening. Alternate Members will serve in rotation as noted at each Agenda Item.

Also in attendance was Wetlands Agent/Zoning Enforcement Officer Robin Newton.

AGENDA ADDITIONS: None

APPROVAL OF MINUTES – August 3, 2011:

MOTION: To ACCEPT the Minutes of Regular Meeting dated August 3, 2011 with the following amendments:

Page 5, Line #13, **NEW BUSINESS: 09-2011: NEWBERRY VILLAGE:**

“.....suggested by Commissioner Roloff he would BE losing units.”

Page 6, Line #6, **NEW BUSINESS: 09-2011: NEWBERRY VILLAGE:** “requested clarification that the path can include only selected SELECTIVE trimming and pruning.”

Page 6, Line #27, **NEW BUSINESS: 09-2011: NEWBERRY VILLAGE, Standard Condition #2:** “.....any new phase ~~are~~ IS to begin.....”

Page 7, Line #40, **NEW BUSINESS: 09-2011: NEWBERRY VILLAGE, ADDITIONAL CONDITION #14:** “.....clearing takes ~~places~~ PLACE it can”

Page 9, Line #2, **NEW BUSINESS: 09-2011: NEWBERRY VILLAGE, ADDITIONAL CONDITION #25:** “.....applicant shall time the placement of the silt seek SOCKS within.....”

Page 9, Line #41, **MISCELLANEOUS/2 Informal Discussion – 4 New Park – Christopher Eseppe:** “.....have been identified as being a 100’ ~~distance~~ DISTANT from the pond.....”

Osborn moved/ Koczera seconded/VOTE: In Favor: Unanimous

NEW PUBLIC HEARINGS: None.

NEW BUSINESS: 08-2011: GERRY WILCOX: 50 Newberry Road: Request for permit for regulated activities – to include construction of a concrete block wall and the construction of a detention basin for the expansion of equipment storage and trailer parking by filling of approximately 2,150 square feet of wetlands and creating 2,150 square feet of wetlands. This property is located on Newberry Road; nearest intersection is Thompson Road. Assessor's Map 09, Block 19, Lot 004. *(65 day application period ends August 5, 2011; application extended to September 7, 2011):*

Chairman Savaria read the description of this Item of Business. Appearing to discuss the Application was Robert Arsenault, P.E., and the Applicant, Gerry Wilcox.

Mr. Arsenault began his presentation. The parcel, which is located on the southside of Newberry Road, contains a building and storage yard for equipment. This Application is to expand "this" part of the property to extend approximately $\frac{3}{4}$ acre of area for a similar use. A small band of wetlands exists on the east end of the property. The wetlands were mapped in June of 2011 by Mike Gragnolati; a report has been submitted regarding his findings. Town Staff had asked David Askew, of the Hartford County Soil District, to review the wetlands map in relation to this proposal and offer recommendations. Page 2 of the plan now contains a detailed 20 scale map of the area of development. Grading will occur to the east to fill in an area for use as a stockpile for materials. In order to create the flat area they are creating a large block wall to the east and south end of the property. They will also fill in approximately 2,150+/- square feet of wetlands. A small wet-bottomed detention basin will be created which will provide a one-on-one balance of the wetlands lost. Two swales will be created to direct flow towards the detention basin. Mr. Arsenault reported that the primary function of the wetlands is for storm water control, and that function will continue. At the recommendation of Town Engineer Norton and David Askew they have added a level spreader to reduce the velocity of the flow of the water.

Mr. Arsenault reported they believe they have taken care of all comments made by Town Engineer Norton, Wetlands Agent Newton, and David Askew. They asked that the Commission look favorably upon the Application.

Wetlands Agent Newton reported she has given the Commission a copy of a letter dated August 25, 2011 from Mr. Arsenault which indicates how the Applicant has addressed the concerns previously raised by herself, Town Engineer Norton, and David Askew. Wetlands Agent Newton concurred that all of the collective concerns have been adequately addressed.

Wetlands Agent Newton also reported that 10 minutes prior to this Meeting she had received a request for a CEPA Intervention claim filed on behalf of Steve Dearborn; the

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claim is related to this Application. She recommended the Commission take a short recess to familiarize themselves with the content of the CEPA action. Chairman Savaria suggested the Commission continue their review before reviewing the Intervenor claim.

Commissioner Roloff questioned Wetlands Agent Newton if it is “usual” for a wetlands basin to be constructed in a wetlands? Wetlands Agent Newton reported it is NOT unusual for the construction of a wet-bottomed basin; she referenced page 2 of David Askew’s report which addressed the adequacy of a wet-bottomed basin. Wetlands Agent Newton READ FOR THE RECORD an excerpt from Mr. Askew’s report. Wetlands Agent Newton concluded that the answer to Commissioner Roloff’s question was “yes”.

Commissioner Roloff questioned the expected discharge of the basin? Mr. Arsenault offered the following information:

Period	Pre-development Flow	Post-development Flow	Detention Performance
2 Year	4.4	4.8	4.2
10 Year	6.9	7.5	6.7
25 Year	8.5	9.2	8.3
50 Year	9.5	10.3	9.4
100 Year	10.17	11	10.1

Commissioner Baker questioned if the Applicant had provided a Maintenance Schedule? Mr. Arsenault referenced a schedule included in the plans which calls for a yearly cleaning of the detention basin.

Chairman Savaria indicated FOR THE RECORD that the Commission has received a memo from Town Engineer Norton which indicates that the calculations for the detention basin has been proven to be correct.

Commissioner Sawka questioned what type of material will be used to cover the area? Mr. Arsenault reported the area will be covered with gravel, and loam and seeding around the edges to stabilize the slopes. Staked netting will also be used.

Chairman Savaria indicated FOR THE RECORD that the Commission has received a memo from Wetlands Agent Newton which indicates that her concerns/requests have been met.

Commissioner Koczera questioned the type of gravel to be used; he noted some people call ground up asphalt gravel. Mr. Wilcox joined the discussion. Mr. Wilcox noted he is a principal in 50 Newberry Road. Mr. Wilcox reported that at the present time the property is covered with gravel, and recycled gravel in some areas, and stone mixed with gravel in other areas. Commissioner Koczera questioned that if it was reprocessed asphalt? Mr. Wilcox suggested that recycled gravel does have some asphalt in it. Under State specifications 12 - 15% asphalt is considered allowable as a component of gravel; it

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is considered gravel and what he has is less than that. He estimated that over 50% of the area on his site is ¾" stone and he has mixed it with gravel to be impervious, so it doesn't really harden up. Commissioner Koczera suggested that in using ground up asphalt once it's put down it becomes like blacktop, and water doesn't run through it. Mr. Wilcox concurred; he suggested it starts as asphalt but if it's put in at the right time it becomes a pervious material; it's not impervious. That is not the case on his property; Mr. Wilcox indicated he has no intention of doing it that way.

Chairman Savaria questioned Mr. Arsenault about imperviouness. Mr. Arsenault indicated they looked at the gravel area and considered it impervious because in the Town's Regulations gravel is considered impervious. Mr. Arsenault noted that when they did the calculations for this area, as far as run off flow, they considered it as if it were pervious - a worse case scenario.

Commissioner Osborn questioned that the surface is already impervious? Mr. Wilcox indicated nothing has been done yet. Mr. Arsenault clarified that the area already approved is impervious, while the area of expansion which is the subject of this Application is not yet impervious.

Commissioner Baker questioned if there are currently trees in the upland review area? Mr. Arsenault replied some of the area is underbrush, while some of the area is trees. Mr. Wilcox clarified that there is about a 30' to 40' area which is heavily treed on the north side; the east side is heavily wooded as well. Commissioner Sawka questioned what was done with the stumps? Mr. Wilcox reported they will be removed from the site; Mr. Arsenault noted the removal is shown on the plans.

Wetlands Agent Newton noted the status of the following documentation FOR THE RECORD:

- In July (7/14/2011) a memo was given to Mr. Wilcox and Mr. Arsenault in which Wetlands Agent Newton and Town Engineer Norton requested that 11 different issues be addressed. Wetlands Agent Newton READ FOR THE RECORD the 11 issues. She noted in response Mr. Arsenault submitted a letter dated 8/25/2011 advising how he has addressed those issues.
- Wetlands Agent Newton's memo dated 9/1/2011 listing items 1 through 7 was given to the Commission. She READ FOR THE RECORD those specific issues.
- Receipt of David Askew's (of the North Central Conservation District, Inc.) letter dated 8/10/2011 regarding his findings upon inspection of the site; she READ FOR THE RECORD comments from Mr. Askew's letter.
- Receipt of memo dated 9/7/2011 from Town Engineer Norton noting comments raised in the joint 7/14/2011 memo have been addressed; she READ FOR THE RECORD Town Engineer Norton's memo.

Chairman Savaria requested a 10 minute recess to give the Commission time to review the CEPA Intervenor claim.

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MOTION: To TAKE A TEN MINUTE BREAK.

Osborn moved/Sawka seconded/VOTE: In Favor: Unanimous

The Commission RECESSED at 7:36 p.m.

MOTION: To BRING THE COMMISSION BACK INTO SESSION AT 7:50 P.M.

Koczera moved/Osborn seconded/VOTE: In Favor: Unanimous

Chairman Savaria indicated the Commission would review if the various points of the Intervenor claim have merit; the Commission will then decide if they will accept the claim.

The Commission reviewed the following items listed under the Intervenor claim:

Item #4. “The EPA of 1971 CGS Section 22a-19 et seq. provides in part that any person may intervene in any administrative proceeding where the proceeding involves conduct which has, or which is reasonably likely to have, an effect of unreasonably polluting, impairing or destroying the public trust in the air, water, or any other natural resources of the state, including those located both on, and off, the subject site.”

Chairman Savaria suggested there has been much evidence presented by the Applicant that the detention basin will serve to clean the water and not cause undue run off. Commissioner Baker felt that concern has been addressed; he didn't feel the proposal will unduly impair the resources of the site. Commissioner Sawka suggested the basin has been engineered to consider all of that.

Mr. Dearborn requested to speak from the audience. Chairman Savaria reported the Commission has not yet accepted the Intervenor claim, therefore Mr. Dearborn can not speak at this time.

Continuing discussion on Item #4 of the Intervenor claim Commissioner Roloff suggested she felt all the concerns mentioned have been addressed.

Chairman Savaria recalled another application for which a CEPA Intervenor claim was submitted. During that application the Commission reviewed the points and determined some of the points had merit, therefore, that person was allowed to act as an Intervenor. He suggested the Commission needs to follow the same procedure on this Application. He reiterated that the Commission has not yet accepted the Intervenor claim on this Application; no comments will be allowed until the Intervenor claim is accepted.

Chairman Savaria returned discussion to Item 6 of the Intervenor claim. Item 6 includes 11 subsections. Chairman Savaria READ FOR THE RECORD Item 6 and each of its

subsections; the Commission reviewed each point as follows:

Item #6: “The Intervenor finds that such unreasonable impairment or destruction of wetlands and watercourses, on-site and off-site, is reasonably likely for the following reasons:

- a. “The application fails to provide substantive data and analysis regarding existing site conditions, including, but not limited to, soils descriptions (i.e. soil scientist’s report), adequate inventories of flora and fauna, an adequate description of the regulated resources (on-site and off-site), and an adequate assessment of wetlands functions and values.”

Chairman Savaria felt Wetlands Agent Newton’s concerns of 7/14/2011 have been answered. He referenced Mike Gragnolati’s report dated 6/9/2011, which includes pictures and talks about the wetlands soils, the overall functions for the area delineated are very low due to work on the adjacent property, and he recommended a seed mix to mitigate wetlands loss.

Chairman Savaria questioned if any of the Commissioners felt those issues haven’t been addressed? There was no response from any of the Commissioners.

- b. “The application fails to provide a substantive analysis of *direct* impacts resulting from the filling of 2,150 square feet of regulated wetlands and watercourses, including, but not limited to, impacts to wetland functions and values.”

Chairman Savaria indicated everyone knows the wetlands is proposed to be filled. Commissioner Baker felt those concerns were answered by Wetlands Agent Newton’s memo of 9/1/2011, and by Mike Gragnolati’s report regarding the functions of the regulated wetlands, and comments regarding the proposed wet-bottomed basin. The concerns were also addressed by David Askew’s report.

- c. “The application fails to assess *indirect* impacts upon regulated wetlands and watercourses, from the loss of nearly all the forested buffer to the regulated resources, which would remain.”

Chairman Savaria felt this concern was a flood control issue. The soil scientist said the function of the wetlands is to catch the run off and control flooding, and that is what the new basin will do. Chairman Savaria felt this concern has been answered. Wetlands Agent Newton indicated that trees are not required; this is not an area of a vernal pool that would require shading. Wetlands Agent Newton felt Item c has been addressed. Commissioner Baker felt the hydrology issues have been addressed by Mr. Arsenault’s 8/25/2011 report. Commissioner Roloff felt these concerns have been addressed by

Mike Gragnolati's letter.

- d. "The application fails to provide an analysis of potential impacts to wetlands and watercourses hydrology from the proposal."

Chairman Savaria felt the drainage calculations tell what will happen; nothing downstream is being impacted. Commissioner Roloff felt that, according to the calculations submitted by Mr. Arsenault, there is little change. Chairman Savaria suggested there will be mostly negative impact.

- e. "The application fails to provide for adequate analysis of impacts to off-site wetlands and watercourses, including an open water body (i.e. pond)."

Chairman Savaria felt that comment was a reference to the pond on Mr. Dearborn's property. If the report says there is no change in run off, and if it says that any run off will be handled by the detention basin then there will be no impact. Commissioner Baker felt those concerns will be handled by the level spreader, and the discharge doesn't increase at all, and, that has been confirmed by Town Engineer Norton. Chairman Savaria also felt there is a swale on the adjacent property which will help as well.

- f. "The application fails to attenuate for increases to peak discharges and volumes of stormwater to on-site and off-site wetlands and watercourses."

Chairman Savaria felt that statement wasn't true. He referenced the calculations as addressing that issue. None of the Commissioners had any additional comments regarding this item.

- g. "The application fails to provide adequate stormwater quality renovation which would be protective of downstream receiving regulated watercourses."

Chairman Savaria felt that was what the basin was designed to do. Commissioner Roloff concurred. Chairman Savaria felt Town Engineer Norton said that is what it will do.

- h. "The applications fails to provide a substantive stand-alone wetland mitigation plan through wetlands restoration, enhancement, and creation."

Chairman Savaria felt that's what this plan is. Commissioner Roloff questioned if there needs to be a stand-alone mitigation plan? Wetlands Agent Newton replied "no"; there is no such requirement. Someone can propose filling with their mitigation but it isn't required. Commissioner Roloff then suggested she felt Item h had been addressed.

- i. "The application fails to provide an operation and maintenance plan for the

stormwater management features, including for the proposed basin.”

Commissioner Baker felt that comment has been answered. Wetlands Agent Newton indicated that is shown on Sheet 1.

- j. “The application represents an overly intense site development of the subject property, which will adversely impact on-site and off-site natural resources, including, but not limited to, watercourses and wetlands.”

Commissioner Baker didn’t feel there was any evidence of that occurring.

- k. “The application does not provide alternative uses of the site, which will cause less or no environmental impact to natural resources including wetlands, watercourses or buffer areas.”

Chairman Savaria felt the Commission was told that wasn’t necessary unless the application was held under a Public Hearing. Wetlands Agent Newton suggested that a prudent and feasible alternative is NOT required unless there is a Public Hearing, or unless the Commission accepts even one of the points of the CEPA Intervenor claim; then the applicant would have to present evidence that the proposal was the best option.

Chairman Savaria suggested that after reviewing the points listed in Item 6 of the Intervenor claim he didn’t feel that the Intervenor has any status with regard to this Application. Wetlands Agent Newton advised the Commission they must decide that these points haven’t been addressed, or that they are legitimate concerns. Chairman Savaria questioned the Commissioners if anyone felt any of the points raised in the Intervenor claim had merit?

Commissioner Malin felt we have adequately covered all bases on this.

Commissioner Baker didn’t feel that this Application will have an adverse effect on, or impact the environment. He also felt Items “a” through “k” have been addressed by the Applicant, Town Staff, or the soil scientist; he didn’t feel this Application meets any of the criteria of the Intervenor claim.

Commissioner Roloff felt all of the issues in Section 6 (of the Intervenor claim) have been adequately addressed via all she has heard tonight, as well as the information in the soil scientists report. Commissioner Roloff felt there is no proof of negative impact caused by this Application.

Commissioner Sawka agreed with comments made by his fellow Commissioners.

Commissioner Osborn noted the Commission has been working on this Application since June. He felt all the questions have been adequately addressed; the plans speak for

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themselves.

Commissioner Koczera believed everything had been addressed properly.

Chairman Savaria requested a motion to deny, or accept, the Intervenor claim.

MOTION: To REJECT THE REQUEST FOR A CEPA INTERVENTION.

Discussion: None.

Roloff moved/Osborn seconded/VOTE: In Favor: Unanimous

Chairman Savaria questioned if any of the Commissioners had any additional issues to discuss; no one spoke up. Chairman Savaria requested a motion to approve, or deny, the Application.

MOTION: To APPROVE, WITH STANDARD CONDITIONS, APPLICATION #08-2011: GERRY WILCOX: 50 Newberry Road: Request for permit for regulated activities – to include construction of a concrete block wall and the construction of a detention basin for the expansion of equipment storage and trailer parking by filling of approximately 2,150 square feet of wetlands and creating 2,150 square feet of wetlands. This property is located on Newberry Road; nearest intersection is Thompson Road. Assessor's Map 09, Block 19, Lot 004.

Osborn moved/Koczera seconded/

VOTE: In Favor: Unanimous (Koczera/Osborn/Savaria/Malin/Sawka/Baker/Roloff)

Opposed: No one

Abstained: No one

MOTION: To TAKE A FIVE MINUTE BREAK.

Baker moved/Roloff seconded/VOTE: In Favor: Unanimous

The Commission RECESSED at 8:20 p.m.

MOTION: To RECONVENE THIS MEETING AT 8:25 p.m.

Osborn moved/Roloff seconded/VOTE: In Favor: Unanimous

NEW APPLICATIONS TO BE RECEIVED: None.

MISCELLANEOUS: Nothing presented.

AGENT DECISIONS:

Wetlands Agent Newton advised the Commission that they had previously approved

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construction of a single family ranch style dwelling on a lot at 86 Winkler Road. She described the lot as being located north of Newberry Village. When the plans were submitted to the Planning Office they showed a Colonial dwelling. Wetlands Agent Newton suggested she had no problem signing off on this permit as the footprint was actually smaller than the proposed footprint for the approved ranch. She discussed this Agent sign off with Chairman Savaria, who concurred with her assessment.

Chairman Savaria questioned if the Commission was comfortable with he and Wetlands Agent Newton handling this Agent sign-off in this manner? Commissioner Roloff suggested she felt both Chairman Savaria and Wetlands Agent Newton had a lot of sense; she had no problem with this issue. None of the other Commissioners raised opposition to this administrative process.

STATUS REPORTS: No reports pending.

CONFERENCES; SEMINARS/TRAINING:

Wetlands Agent Newton reported that no information had been received regarding the third session of the Commissioners Training Program. She will forward information to the Commissioner as it becomes available.

CORRESPONDENCE:

Wetlands Agent Newton reported the EPA (Environmental Protection Agency) has signed off on the remediation plan for Steve Dearborn; they have made the Planning Office the lead agency on this activity as the ACOE (Army Corp of Engineers) is out of the picture at this point.

**GENERAL BOARD DISCUSSION/1) Court Case – Taylor vs. Fairfield
Conservation Commission – Farm Roads:**

Wetlands Agent Newton provided the Commission with a copy of the captioned Court case, which involves the filling of wetlands As-Of-Right to create a farm road. The plaintiff in this case said the State Statutes gave him the exemption to make a farm road for activity directly related to farming, even though it included filling of wetlands. The Supreme Court said the trial court properly determined that the regulations specified do not permit, as of right, the filling of wetlands to construct roads, irrespective of whether the roads are directly related to the farming operation. Wetlands Agent Newton noted an applicant must apply for a permit for this filling activity.

Commissioners discussed the following issues:

- Commissioner Roloff suggested she has submitted a formal complaint against Merlot on the Water. She has seen the owner's workers dumping chunks of blacktop and a rusty backhoe blade in the pond.

- Commissioner Baker questioned if the owner of Newberry Village has submitted his Pest Management Plan, and if the owner has placed the Conservation placards as required? Wetlands Agent Newton reported the Pest Management Plan has not yet been submitted. She has not visited the site this week but feels the placement of the placards may still be outstanding. Wetlands Agent Newton reported Newberry Village, LLC is currently before the Planning and Zoning Commission (PZC) as their permit has expired; if the permit is not re-approved by the PZC then both of these would be irrelevant.
- Commissioner Baker noted the Town currently has access to GIS software, which is helpful to see what has occurred on a site if the Commissioner is unable to visit the property. He requested if GIS arials could be included in the Commissioner's packets in the future? Wetlands Agent Newton reported there is a second GIS database which is available through the Assessor's Office; that software has 2009 leaf-on and 2006 leaf-off arials available. She suggested the SmartBoard is also available for presentations. Wetlands Agent Newton noted the Planning Office uses both systems constantly to assist applicants and residents. Commissioner Roloff suggested similar information is also available through Google Earth.
- Commissioner Koczera questioned what is the final number of members who will serve on the Commission? Wetlands Agent Newton reported the Commission can be comprised of 5 Regular and 2 Alternate Members; the Commission is subject to one more reduction.

PUBLIC PARTICIPATION (Discussion on non-Agenda items only):

Selectman Pippin: suggested the Commission did good tonight.

Board of Finance Member Pippin: suggested a specific applicant tends to go on during his presentations. Chairman Savaria suggested the Commission tries to give people the opportunity to make their statements.

EXECUTIVE SESSION/1) Pending Litigation:

MOTION: To GO INTO EXECUTIVE SESSION AT 8:32 P.M. Attending were Chairman Savaria, Commissioners Koczera, Malin, Osborn, Sawka, Baker, Roloff; Wetlands Agent Newton; Recording Secretary Hoffman.

Sawka moved/Roloff seconded/VOTE: In Favor: Unanimous

MOTION: To COME OUT OF EXECUTIVE SESSION AT 8:40 P.M.

Koczera moved/Baker seconded/VOTE: In Favor: Unanimous

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ADJOURNMENT:

MOTION: To ADJOURN this Meeting at 8:40 p.m.

Sawka moved/Koczera seconded/VOTE: In Favor: Unanimous

Respectfully submitted:

Peg Hoffman, Recording Secretary, Inland Wetlands and Watercourse Commission
(4065)